OAH 8-1700-18063-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by Velma Korbel, Commissioner of Human Rights v. City of Saint Paul

**ORDER ON MOTION FOR SUMMARY DISPOSITION**

The above-entitled matter involves a disability discrimination claim brought pursuant to the Minnesota Human Rights Act (hereinafter "MHRA") against the City of Saint Paul (hereinafter "City" or "Respondent").

It came before Administrative Law Judge Eric L. Lipman on Respondent's motion for summary disposition. Oral argument on Respondent's motion was not requested by either party.

Based upon all of the files, records, and proceedings in this matter, and for the reasons detailed in the Memorandum below,

**IT IS HEREBY ORDERED THAT**:

1. The City's Motion for Summary Disposition is DENIED.

Dated: February 27, 2008

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

## MEMORANDUM

### Standards for Summary Disposition

Respondent has brought a motion for summary disposition. Respondent maintains that Meisel is not disabled within the meaning of the Minnesota Human Rights Act and therefore is not entitled to protection under the Act.

Summary disposition is the administrative equivalent of summary judgment.[1] Summary disposition is appropriate when there is no genuine dispute as to the material facts of a contested case and one party necessarily prevails when the law is applied to those undisputed facts.[2]

The moving party carries the burden of proof and persuasion to establish that there are no genuine issues of material fact which would preclude disposition of the case as a matter of law.[3] Further, when considering a motion for summary disposition, the tribunal must view the facts in the light most favorable to the non-moving party.[4] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.

In order to defeat an otherwise proper motion for summary disposition, the non-moving party must show the existence of material facts that are genuinely disputed.[5] A genuine issue is one that is not either a sham or frivolous and a material fact is a fact whose resolution will affect the result or outcome of the case.[6]

**Legal Standards Under the Minnesota Human Rights Act**

The Minnesota Human Rights Act ("MHRA") prohibits covered employers from discharging or discriminating against an employee with respect to terms, conditions, or privileges of employment because of disability, except when based on a bona fide occupational qualification.[7]

The term "disability" is defined in Minn. Stat. § 363A.03, subd. 12, to mean "any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment."

When defining in the MInnesota Human Rights Act who qualifies as a disabled person, the Minnesota Legislature crafted a statutory definition of disability

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[1] *See, Pietsch v. Mn. Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004).

[2] *See, Sauter v. Sauter,* 70 N.W.2d 351, 353 (Minn. 1955); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

[3] *See, Theile v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

[4] *See, Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993)*; Ostendorf v. Kenyon,* 347 N.W.2d 834, 836 (Minn. App. 1984).

[5] *See, Murphy v. Country House, Inc*., 240 N.W. 2d 507, 511-12 (Minn. 1976); *Borom v. City of St. Paul*, 184 N.W.2d 595, 597 (Minn. 1971).

[6] *See, e.g., O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

[7] *See,* Minn. Stat. § 363A.08 (2) (2006).

that incorporates federal regulations under the Americans with Disabilities Act.[8] Importantly, the parallel federal regulations under the Americans with Disabilities Act define "Major Life Activities" as "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."[9]

The Minnesota Human Rights Act further provides that as of July 1, 1994, it is an unfair employment practice for an employer with more than 15 employees "not to make reasonable accommodation to the known disability of a qualified disabled person or job applicant unless the employer . . . can demonstrate that the accommodation would impose an undue hardship on the business . . . ." Minn. Stat. § 363A.08, subd. (6) (2006). The statute goes on to state:

> Reasonable accommodation means steps which must be taken to accommodate the known physical or mental limitations of a qualified disabled person. Reasonable accommodation may include but is not limited to, nor does it necessarily require: (1) making facilities readily accessible to and usable by disabled persons; and (2) job restructuring, modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis..

*Id*.

**Analysis of Complainant's Documentary Evidence**

At the times relevant to this proceeding, Respondent City of Saint Paul was an "employer" within the meaning of Minn. Stat. §§ 363A.03, subd. 16 and 363A.08, subd. 6, and the Charging Party, Tamara Meisel, was an "employee" within the meaning of Minn. Stat. § 363A.03, subd. 15.

Based upon the evidence presented, the Administrative Law Judge cannot conclude, as a matter of law, that Meisel does not have a disability within the meaning of the Minnesota Human Rights Act. It is genuinely disputed whether, when Meisel's condition becomes symptomatic, she is unable to walk, sit upright, undertake household chores or move around.[10] Meisel avers that when she is symptomatic she is completely incapacitated and is severely limited in her ability to

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[8] *See,* Minn. Stat. § 363A.03 (12) (2006); *State by Cooper v. Hennepin County*, 441 N.W.2d 106, 110 (Minn. 1989); *Miller v. Centennial State Bank*, 472 N.W.2d 349, 351 (Minn. App. 1991); *compare also,* Minn. Stat. § 609.2336 (1)(5) (2006).

[9] *See,* 29 C.F.R. § 1630.2 (i) (2007); *compare also,* Minn. Stat. § 609.2336 (1)(6) (2006).

[10] *See,* Affidavit of Tamara Meisel, at ¶¶ 6 – 9; Jacot Affidavit, Exhibit A at 26; Jacot Affidavit, Exhibit C, Geisen Deposition Exhibit 3; Jacot Affidavit, Exhibit F at 9, 11 - 14, 16-17, 20, 23, 32, 42, 45, 47-48, 55-56 and 59-61; Jacot Affidavit, Exhibit L at 9.

care for herself, perform manual tasks, walk or work. The activities are major life activities under state and federal law.[11]

Drawing all inferences in the record in favor of the Complainant, Ms. Meisel's condition appears to be one that significantly restricts the manner or duration under which she can perform particular major life activities "as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity."[12] Indeed, viewing the record in the light most favorable to the Complainant, the record suggests that when Ms. Meisel's pain flare-ups occur, the "duration" that she is able to work drops to near zero.

While acknowledging the procedural advantage that lies in favor of the Complainant, at this stage of the proceedings, as the party opposing summary disposition, the City's argument is nuanced: The City argues that Ms. Meisel's condition, which is debilitating only intermittently, is more like the temporary conditions that are excluded from the definition of disability, than it is the chronic ailments that trigger the protections of state and federal law.[13]

As to this question, the guidance from the U.S. Equal Opportunity Commission as to the scope of the definition of "disability," seems particularly relevant and helpful. The EEOC explains:

> [T]he duration of an impairment does not, by itself, determine whether the impairment substantially limits an individual's major life activities. It is just one factor to be considered with all of the other relevant information. An impairment may be long lasting or permanent but still not constitute a substantial limitation to major life activities. For example, a permanently injured finger is not substantially limiting if it does not significantly restrict an individual's ability to perform a major life activity such as performing manual tasks or caring for oneself. Thus, when determining whether an impairment substantially limits a major life activity, one must consider the severity of the limitation caused by the impairment as well as the duration of the limitation. <u>An impairment is substantially limiting if it lasts for more than several months and significantly restricts the performance of one or more major life activities during that time</u>. It is not substantially limiting if it lasts for only a brief time or does not significantly restrict an individual's ability to perform a major life activity.
>
> In sum, relatively brief and transitory illnesses or injuries that have no permanent or long-term effects on an individual's major life

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[11] *See,* 29 C.F.R. § 1630.2 (i) (2007); *compare generally,* Minn. Stat. § 609.2336 (1)(6) (2006).

[12] *Compare,* 29 C.F.R. § 1630.2 (j) (1) (ii) (2007) <u>with</u> Footnote 10, *supra*.

[13] *See, Respondent's Memorandum of Law in Support of Summary Disposition*, at 7.

> activities are not disabilities. Temporary impairments may be disabilities if they take significantly longer than normal to heal and significantly restrict the performance of major life activities during the healing period. Similarly, long-term impairments, or potentially long-term impairments of indefinite duration, may be disabilities if they are severe. Chronic conditions that are substantially limiting when active, and conditions with a high likelihood of recurrence in substantially limiting form, also are disabilities.[14]

This same distinction – between impairments that are short-lived, subject to healing and not likely to resurface, on the one hand, and those which strike "when active," and are "potentially long-term impairments," on the other – is one that is carried through in the case law. The former condition does not qualify one as a disabled person, whereas the latter type of condition may.[15]

At this stage of the proceedings, however, it cannot be established that Ms. Meisel falls outside of this latter, protected category. For that reason, a grant of summary disposition in favor of the Respondent City is inappropriate.

**E. L. L.**

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[14] *See,* U.S. Equal Employment Opportunity Commission, Compliance Manual, Section 902 ("Definition of the Term Disability") (http://www.eeoc.gov/policy/docs/902cm.html); *see also*, *Gen. Elec. Co., v. Gilbert*, 429 U.S. 125, 141-42 (1976) (the EEOC Guidelines are a source of informed and persuasive interpretation by the enforcing administrative agency to which courts and litigants may properly resort for guidance).

[15] *Compare, e.g., Toyota Motor Mfg., Kentucky, Inc. v. Williams*, 534 U.S. 184, 197 (2002) ("If Congress intended everyone with a physical impairment that precluded the performance of some isolated, unimportant, or particularly difficult manual task to qualify as disabled, the number of disabled Americans would surely have been much higher.... The impairment's impact must also be permanent or long term"); *Mellon v. Federal Express Corp.*, 239 F.3d 954, 956-57 (8th Cir. 2001) ("The ADA defines 'disability' as a 'physical or mental impairment that substantially limits one or more of the major life activities' of individuals.... Only a permanent or long-term condition will suffice") with *Miller*, 472 N.W.2d at 351 (sleep apnea, which caused the employee to "drop[] off to sleep uncontrollably during the work day" was a proper basis to find that the employee "is a disabled person under the Minnesota Human Rights Act").